

STATE OF MICHIGAN  
COURT OF APPEALS

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OLIVIA FAY DENNIS,

Plaintiff-Appellant,

v

STEVE TYLER,

Defendant-Appellee.

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UNPUBLISHED

March 21, 2017

No. 331503

Allegan Circuit Court

LC No. 13-052663-DM

Before: SERVITTO, P.J., and MARKEY and GLEICHER, JJ.

MARKEY, J. (*dissenting*)

I respectfully dissent from the majority’s decision to reverse the trial court’s order granting defendant summary disposition on plaintiff’s post-divorce motion to revoke paternity. After scouring the lower court file, I must conclude that the factual scenario and the most pertinent facts, instead, warrant the opposite conclusion from that set forth in the majority opinion; consequently, I would affirm the trial court’s legal decision.

It is important to review the genesis of this case and “just” the facts. On July 26, 2012, plaintiff Olivia Dennis gave birth to BT, the subject of these proceedings. The very next day, she married defendant Steve Tyler in an obviously planned wedding. Tyler knew before the marriage there was a possibility that he was not the father of the child Dennis was expecting, but he readily married her, accepting and caring for BT as his own from his birth. Tyler and Dennis had discussed the matter and had reached that agreement. BT became a four-year-old in July 2016.

At the hospital after BT was born, Dennis provided the information necessary to complete his birth certificate, including that BT’s father was Steve Tyler. She “certified” that the information she provided was correct and signed the birth certificate. Although plaintiff’s counsel trumpets as a crucial fact that Tyler did not sign the birth certificate, it is important to note that *there is nowhere on the form for him to have signed*. The birth certificate form provides just one signature line, ostensibly just for the mother. Both Dennis and Tyler believed

that Tyler had signed an acknowledgment of parentage,<sup>1</sup> but neither could produce that document.

One year later, in July 2013, Dennis had a second baby boy, who was named BR Dennis, i.e, he was given plaintiff's last name. Apparently, Steve Tyler did not father BRD.

On December 4, 2013, plaintiff, in pro per, filed a complaint for divorce. She properly and fully completed a State Court Administrative Form (SCAO) form that required information on "Minor children **born or adopted during or before** the marriage." (Bold in original). Plaintiff circled the word "before" and listed BT. The form also requested information on "Minor children born during the marriage that are **not** the husband's children." (Bold in original). Plaintiff listed BRD. Plaintiff requested that she be awarded both legal and physical custody of both children; she requested reasonable visitation be determined in the best interests of the children; and she indicated it was in the best interest of the children that child support be ordered. Throughout the proceedings, plaintiff actively sought child support from her husband.

In response, defendant claimed that both children were his, requested joint legal and physical custody, that neither party be required to pay child support, and that regardless of the paternity of BRD, he was his legal father, and that he wanted to be the father of both children. The trial court ordered a paternity test with respect to BRD.

The case was referred for domestic relations mediation on May 4, 2014, which resulted in defendant's being ordered to pay child support and allowed parenting time.

On July 7, 2014, plaintiff, still in pro per, correctly completed and filed a SCAO form titled Motion Requesting Order of Non-Paternity—but only as to BRD. Although plaintiff did not check the box so requesting, she wrote at the bottom of the form, "Please order DNA testing for minor child BT." She signed a statement that the information she provided was "true to the best of my knowledge, information and belief." Plaintiff also attached a copy of a DNA report proving that Brandon Shattuck, not Steve Tyler, is BRD's biological father. The trial court granted plaintiff's motion in an order entered September 16, 2014, thereby terminating defendant's parental rights to BRD and establishing Shattuck's paternity in respect to BRD. The court further ordered that plaintiff prepare and submit a proposed judgment of divorce within 21 days.

While still acting in pro per, plaintiff prepared and filed on December 3, 2014 a form proposed judgment of divorce. Under paragraph 2, Children, plaintiff checked that *there are minor children of the parties*. Then, under paragraph 2a, Custody, she wrote BT's full name, date of birth, and that both legal and physical custody of BT is "Joint." In the next paragraph, she correctly listed BRD as another child but not her husband's. Plaintiff completed the remainder of the form in her own handwriting with a detailed parenting schedule—including the parties' past parenting time, and discussions about child support that provided information pertaining to defendant's finances and income. The court file also contains detailed calendars

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<sup>1</sup> See the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to MCL 722.1013.

that plaintiff herself maintained regarding parenting time. Plaintiff, defendant, a friend of the court representative, and the trial court, all signed the judgment of divorce.

Both plaintiff and defendant attended a December 3, 2014 pro con hearing and participated without counsel. My review of the transcript indicates that the trial court was very polite, careful, kind, and mindful that the parties were representing themselves, taking care to explain the proceedings and to make sure both parties understood his questions.

At the hearing, plaintiff was sworn and examined by the trial court. Plaintiff conceded she had represented BT as being Steve Tyler's child in her complaint for divorce. She agreed that with respect to BT there was no contrary DNA testing currently available, but "they were going to be getting a DNA test." Plaintiff also agreed that DNA testing showed that BRD was not her husband's biological child.

Later in the hearing, when testifying concerning the breakdown of the marriage, plaintiff stated that "having had a *child* with someone else brought a lot of turmoil to the marriage. Every day was more of arguing, fighting and just not a healthy environment." (Emphasis added). So even as late in the proceedings as the pro con hearing, plaintiff spoke in a manner that conveyed that BT was Steve Tyler's child, using the singular and not including a reference to BT as being "someone else's" child.

The trial proceeded carefully through the proposed judgment that plaintiff had submitted. Again, quite importantly, he reiterated that the Friend of the Court was studying the child support issue because plaintiff was receiving some public assistance. Plaintiff agreed that was correct and further agreed that "terms of the judgment of divorce are fair, reasonable and equitable" to both parties. Defendant was also asked the same questions and answered the same.

Finally, the trial court discussed on the record with both parties all the ramifications of the award of joint legal and physical custody of BT. Both parties agreed that they both understood and were committed and confident that they could faithfully adhere to what was required, especially in respect to sharing custody of BT, and that the resolution was fair and equitable. The trial court ended the hearing by again asking if both parties understood everything and if they had any "other questions or comments . . . ." In sum, the trial court spent extra time on a simple pro con divorce—12 pages of transcript—a far cry from the bullying picture the majority attempts to paint of the trial court. At the conclusion of the hearing, the trial court found that the custody arrangement for BT was fair and equitable, and it signed the judgment of divorce.

The next step of import in this case occurred on April 13, 2015. Plaintiff, again in a SCAO form with more than 3 pages of well-written, grammatically correct handwritten additions, filed a motion for revocation of an acknowledged father's paternity. Plaintiff conceded that she had not properly pleaded that defendant may not be the biological father of BT and that therefore the trial court had not actually resolved the issue. Plaintiff alleged in the next paragraph that her ex-husband is not the biological father of the child because she had "engaged in physically intimate behavior other than with defendant during the months when the minor child was or could have been conceived." Plaintiff did not, however, name who she thought was

the child's father, a requirement under the statute.<sup>2</sup> On June 22, 2015, plaintiff was allowed to amend her motion to name Brandon Shattuck as BT's biological father.

Plaintiff's motion required an affidavit. See MCL 722.1437(4). Although plaintiff provided a statement with her signature notarized, it does not constitute a legal affidavit for several reasons, including that it is comprised of mostly inadmissible hearsay. See MCR 2.119(B)(1). The record suggests that the trial court was demonstrating flexibility to a pro per litigant by accepting what he might otherwise, and properly, have rejected. Although plaintiff expressly asserts a "mistake of fact" as the basis for her motion to revoke defendant's paternity, there appears to be none that is pertinent to her motion.

The trial court ordered DNA testing with respect to the paternity of BT on July 23, 2015. On July 30, 2015, the DNA test results regarding the paternity of BT were reported. The results showed that *neither* Brandon Shattuck nor Steve Tyler is BT's biological father. That means, of course, that BT's biological father remains unidentified. Moreover, despite the belief of both parties, there is apparently no acknowledgment of parentage on file with the State's Parentage Registry.<sup>3</sup> The sole, express record of Steve Tyler's being BT's father is the official birth certificate from the hospital birth, the information for which plaintiff herself provided. She did so deliberately, not mistakenly.

Thereafter, defendant filed a motion for summary disposition under MCR 2.116(C)(8) and (C)(10). Defendant claimed that the parties recently learned that defendant had not actually signed an acknowledgment of parentage. Defendant argued that his acknowledgment of parentage could not be revoked if he was not an "acknowledged father"<sup>4</sup> under the Revocation of Paternity Act (RPA), MCL 722.1431 *et seq.* Defendant, instead, claimed to be an "affiliated father"<sup>5</sup> under the RPA based on the entry of the judgment of divorce, which declared him to be the child's father. The trial court ultimately agreed with defendant and granted his motion under MCR 2.116(C)(8) for plaintiff's failure to state a claim on which relief could be granted.<sup>6</sup>

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<sup>2</sup> See MCL 722.1441(1)(a)(i) and (1)(b)(i), requiring a mother to identify "the alleged father by name in the complaint or motion commencing the action."

<sup>3</sup> See MCL 333.1104(10); MCL 333.1106(3); MCL 333.2824; MCL 333.21532; and MCL 722.1005(1) ("A completed original acknowledgment of parentage shall be filed with the state registrar.").

<sup>4</sup> The RPA defines an "acknowledged father" as "a man who has affirmatively held himself out to be the child's father by executing an acknowledgment of parentage under the acknowledgement of parentage act, 1996 PA 305, MCL 722.1001 to MCL 722.1013." MCL 722.1433(a).

<sup>5</sup> The RPA defines an "affiliated father" as "a man who has been determined in court to be the child's father." MCL 722.1433(b).

<sup>6</sup> The trial court also denied defendant's motion under MCR 2.116(C)(10), but did not fully explain its reasoning for doing so.

In my opinion, the trial court properly granted defendant summary disposition under MCR 2.116(C)(8). Defendant asserts not only correctly, but logically, that if the parties did not execute an acknowledgment of parentage, there is nothing to revoke under § 7 of the RPA, MCL 722.1437. I agree that the trial court properly ruled that defendant is BT's affiliated father and so ordered in the December 3, 2014 judgment of divorce, after both parties appeared at the pro con hearing and each agreed to its terms, the most important of which was establishing the care and custody of the parties' minor child BT. There was no "mistake of fact" or clear error. How can plaintiff make such a claim when it was she, and she alone, who from the child's birth, deliberately and repeatedly asserted in many contexts that defendant was BT's father.

Because the court ordered that defendant is the affiliated father when it entered the judgment of divorce, we must now look to MCL 722.1439 instead of MCL 722.1437. To have standing to proceed under this section of the RPA, the paternity determination must be based on the affiliated father's failure to participate in the court proceedings. MCL 722.1439(1). Clearly, this was not the case and was not alleged. Defendant not only attended and participated in the lengthy pro con hearing in which he was designated an affiliated father, he also continuously fought for both joint legal and physical custody in several court hearings. Under the plain language of the statute, plaintiff has no standing to move to set aside the order of filiation, so she failed to state a claim for relief. On this basis, the trial court properly granted defendant summary disposition.

Moreover, even if the trial court erred by invoking MCR 2.116(C)(8), I would still affirm. A trial court may be affirmed when it reaches the correct result, even if for the wrong reasons. *Helton v Beaman*, 304 Mich App 97, 100; 850 NW2d 515 (2014). In this case, granting defendant summary disposition was also proper under MCR 2.116(C)(10) because "there is no genuine issue as to any material fact," and defendant "is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

The material facts affecting plaintiff's motion are undisputed. It is undisputed that defendant was not an acknowledged father because he never executed an acknowledgment of parentage. Thus, plaintiff did not have a valid claim to revoke defendant's paternity under MCL 722.1437. Defendant was also not a presumed father because the child was born outside of the marriage. The parties, thus, only dispute whether defendant was an affiliated father, that is, whether the properly entered judgment of divorce acknowledged, agreed to and signed by both parties and the court so stating was a determination of defendant's paternity.

"[T]o decide whether a man qualifies as an affiliated father requires consideration of whether he has been determined in a court to be the child's father." *Glaubius v Glaubius*, 306 Mich App 157, 167; 855 NW2d 221 (2014). Applying dictionary definitions of "determine" leads to the conclusion that a man may be classified as an affiliated father "when, in a court of law, a dispute or question about [the] man's paternity has been settled or resolved and it was concluded by the court, on the basis of reasoning or observation, that the man is the child's father." *Id.* at 168. This requires an "actual determination of paternity" following the presentation of "a dispute or question . . . regarding the man's paternity and the matter was in fact resolved by a court." *Id.* A judgment of divorce may be sufficient to establish paternity in this regard, "depend[ing] on the facts of the particular case and the determinations expressed in the divorce judgment." *Id.* at 170.

In the present case, plaintiff alleged in her complaint for divorce that defendant was the child's father. Defendant affirmatively agreed with this allegation. Defendant's paternity of the child remained an undisputed issue until after the parties received the DNA results for BRD. At the hearings that followed, the parties disputed paternity of the first child and whether DNA testing was necessary. Specifically, plaintiff claimed that defendant may not be the child's father, while defendant asserted that he was. Thus, the parties disputed the issue of paternity during the proceeding. Then, at the December 3, 2014 pro con hearing, the trial court questioned plaintiff about paternity, and she admitted that she initially alleged that defendant was the child's father. In response to the trial court's questioning, plaintiff also admitted that there was no DNA testing currently available that established otherwise. The trial court resolved the issue by entering the judgment of divorce on that day, declaring the child's father to be defendant. The trial court's reasoning in making this determination can be established from its questioning of plaintiff at the pro con hearing. Therefore, the judgment of divorce established defendant's paternity as an affiliated father under the RPA. The majority's conclusion that the matter must be remanded for yet another hearing is puzzling under an objective review of the relevant facts of this case, the court rules, or the pertinent statutes.

As discussed already, there is simply no basis to set aside defendant's paternity as an affiliated father under the RPA. Pursuant to MCL 722.1439(1), a trial court may only set aside a judicial order establishing an affiliated father if the affiliated father did not "participate in the court proceedings." Defendant fully participated in the proceedings leading up to the trial court's determination of paternity in the judgment of divorce. The RPA does not provide "for setting aside an order establishing a man as an affiliated father when the man participated in the court proceedings determining his paternity." *Glaubius*, 306 Mich App at 166, citing MCL 722.1439(1). Because defendant's paternity could not be set aside under the RPA, he was entitled to judgment as a matter of law under MCR 2.116(C)(10). The trial court properly granted defendant's motion for summary disposition, even if it did so under the wrong court rule. See *Helton*, 304 Mich App at 100.

I would affirm the trial court's grant of summary disposition because the court correctly interpreted and applied the law to this sad set of circumstances. Moreover, and as an aside, I note that during the course of these proceedings the trial court patently kept in mind that the purpose of our statutes and caselaw interpreting them is to protect the best interests of children.

For all these reasons, I would affirm the trial court.

/s/ Jane E. Markey